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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAR 7 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re	)	
	)	
Review of the Prime Time	)	
Access Rule, Section 73.658(k)	)	MM Docket 94-123
of the Commission's Rules	)	

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To: The Commission

COMMENTS OF VIACOM INC.

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SUMMARY OF ARGUMENT

For decades, the Commission has proclaimed as one of its enduring policy goals the development of additional broadcast networks to compete with the established networks and increase the diversity of programming available to all Americans. That goal was partially realized by the emergence of the Fox Network during the late 1980s and 1990s as a vigorous fourth contender for prime time audiences. Now, a quarter century after the Commission's adoption of rules designed to foster competition with the established networks, fifth and sixth networks have moved from the drawings boards to the air waves.

The new UPN (United Paramount Network) and the WB Network, both of which were launched in January of this year, have great promise but face formidable obstacles in establishing a competitive toehold in prime time television. These new networks start out at an enormous competitive disadvantage in competing with the established networks, both in the geographic scope of their coverage and in their reliance on primarily UHF affiliates. Viacom demonstrates in these comments that the prime time access rule ("PTAR") will play a vital role in helping emerging networks surmount those obstacles by strengthening and expanding the base of independent stations on which they are built. The rule will also serve the critical function of helping stations that affiliate with the new networks to build an audience for their prime time schedules.

Emerging networks will stimulate new program production, generate new jobs in the television industry, and add to the array of program choices available to the American people. Moreover, successful new networks will boost dramatically the strength of their local affiliates and encourage entrepreneurs to build new independent stations, increasing outlet diversity and competition at the local level as well. The growth of new networks will also enhance competition in the national advertising market.

Economic data and analyses submitted in this proceeding by The Law and Economics Consulting Group, Inc. ("LECG") demonstrate that repeal of PTAR (or its off-network component) would cause a dramatic decline in the ratings of independent stations during the crucial access and prime time periods, causing many of those stations to go dark. Specifically, LECG predicts, based on extensive data and sophisticated econometric models, that repeal of the rule would result in an immediate 58% decline in independent station ratings for the second half hour of the access period and a 67% decline in their ratings for the 1-1/2 hour period consisting of the second half hour of the access period and the first hour of prime time. LECG concludes that this weakening and shrinkage of the independent television sector would stymie the growth of emerging networks, resulting in an irretrievable loss of diversity and competition at both the local and national levels.

It is difficult to conceive of a less propitious moment in the development of the television industry for the Commission to tamper with PTAR than the present one. The television industry is at a crossroads. The termination of the network consent decrees, the recent repeal of the financial interest restrictions and the imminent expiration of the syndication restrictions auger momentous changes in the dynamics of syndicated program distribution. For the first time in over twenty years, the major networks will be able to own and control the distribution of syndicated programming, which will put them in a position to jeopardize independent stations' access to the popular syndicated programs which anchor their schedules. Indeed, there has already been a marked upswing in the level of network in-house production activity, which will lead eventually to increased network control over syndication.

Moreover, the networks have been aligning network/affiliate economic interests more closely by making equity investments in their affiliates. They have also been strengthening their hold on their affiliates by lengthening the terms of network-affiliate contracts. The Commission must seriously consider whether it can responsibly discard PTAR before it even has a chance to assess whether these recent developments threaten the economic health of the independent stations that form the foundations of the emerging networks.

It took 17 years after the adoption of PTAR for the Fox Network to emerge, and several more years -- and the boost provided by PTAR -- for Fox to become a meaningful competitive force in prime time television. It took 25 years for conditions in the television marketplace to become ripe for the development of fifth and sixth networks. Now that those new networks have been launched, they face formidable challenges in expanding their program schedules and affiliate bases to the point where their program offerings stimulate additional competition in prime time and substantially strengthen the independent stations that affiliate with them.

The new networks and their primarily UHF affiliates need PTAR to overcome the structural disadvantages they face in competing with the established networks. Repeal of PTAR now would stunt the development of the fifth and sixth networks in their infancy, diminish their ability to contribute to diversity and competition at both the national and local levels, and reverse 40 years of progress toward realization of important Commission policies. The ultimate irony of repealing PTAR at this time would be that it would frustrate achievement of those goals at the very time when their attainment appears within reach. Viacom urges the Commission to maintain its commitment to new networks and strong local television stations and reject calls for PTAR's repeal.

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COMMENTS OF VIACOM INC.

Viacom Inc. ("Viacom") submits these Comments in response to the Commission's Notice of Proposed Rulemaking in MM Docket No. 94-123, released October 25, 1994 (the "NPRM").

I. INTRODUCTION

Twenty-five years ago, the Commission reaffirmed as a major goal its long-standing policy aimed at fostering the creation of new broadcast networks:

> Encouragement of the development of additional networks to supplement or compete with existing networks is a desirable objective and has long been the policy of this Commission.[1]

During the late 1980s and early 1990s, that goal was partially realized by the emergence of the Fox Network as a vigorous fourth contender for prime time audiences with the three established networks -- ABC, CBS and NBC. Now, a quarter of a century after the Commission proclaimed its vision of a

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[1] Competition and Responsibility in Network Television Broadcasting, 25 FCC 2d 318, 333 (1970).

broadcasting landscape in which new networks would compete head to head with the established networks and expand the array of programming choices available to viewers, the Commission is confronted with a choice of either encouraging the growth of fifth and sixth networks or frustrating their development. The choice that must be made -- if the Commission is to reach its long-standing policy objective -- is to retain the prime time access rule ("PTAR").

In the pages that follow, Viacom will establish the direct relationship between the retention of PTAR and the development of emerging broadcast networks. PTAR has, without question, been an important catalyst fostering the growth of local independent television stations -- which are the foundation stones of the new networks. Some of those independent stations formed the core of the Fox Television Network, which launched in 1986. By the early 1990's, Fox, with its complement of independent station affiliates, had become a viable competitive rival in prime time of the three established networks. The growth of the Fox Network stimulated the entry of new stations which signed on as Fox affiliates.[2] Other independent stations -- many of which owe their existence to PTAR -- now form the core of two new emerging

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[2] See Appendix E.

broadcast networks.[3] One of those networks is UPN (the United Paramount Network) which was launched in January of this year.[4]

Notwithstanding changes in the video marketplace that have occurred since 1970, PTAR continues to make a vital contribution to the economic health of independent television stations around the nation. Without those stations and the audiences that they are able to attract during the prime time access hour, the new networks will never become strong, competitive media voices in the broadcast marketplace. A lineup of healthy UHF stations is indispensable to the formation of the new networks. The new networks, like the already successful Fox network, provide the best hope of ensuring the continued viability of local independent broadcast stations and providing robust competition with the established networks.

In response to the Commission's request that commenting parties submit a "rigorous economic framework for analysis, supported by adequate data," Viacom, the Association of Independent Television Stations, Inc. and King World Productions, Inc. joined together to commission a comprehensive economic analysis of PTAR by The Law and Economics Consulting Group, Inc.

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[3] The emerging fifth and sixth networks are sometimes referred to in these comments as the "new networks" or the "new emerging networks."

[4] Viacom is one of the program suppliers to UPN and has a contingent ownership interest in the new network. Viacom's subsidiary, Paramount Pictures Corporation ("Paramount"), provided certain of the initial funding, personnel, and infrastructure to UPN and has an option to purchase 50% of the equity of UPN, all of which is currently held by subsidiaries of Chris-Craft Industries, Inc.

("LECG"),[5] whose principals include several leading authorities on broadcast industry economics.[6]

LECG constructed a vast computer database consisting of historical ratings data extracted from Arbitron reports for the 30 largest markets for fourteen selected years.[7] Using this database and sophisticated econometric models, LECG conducted economic analyses of the impact of adoption of PTAR on independent stations, the projected impact of repeal of PTAR on those stations and the emerging networks, the persistence of the "UHF handicap" which historically has adversely affected most independent television stations, and other issues raised in the Commission's NPRM.

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[5] LECG's Economic Report, entitled "The Economic Effects of Repealing the Prime Time Access Rule: Impact on Broadcasting Markets and The Syndicated Program Market," is cited throughout these comments as "LECG Report." The LECG Report and its detailed Appendices have been filed today in this proceeding.

[6] These authorities include Steven S. Wildman, an Associate Professor in the Department of Communications Studies at Northwestern University, Director of Northwestern's Program in Telecommunications Science, Management and Policy, and the author of many books and articles on economic and public policy issues in the communications industry, including Video Economics (with Bruce M. Owen, Harvard University Press, 1992); James A. Clifton, Professor of Economics at Catholic University of America and formerly Minority Staff Director of the U.S. House of Representatives Budget Committee and Liaison to Senate Committee Leadership Staff; and Raymond S. Hartman, Visiting Associate Professor (since 1988) of the School of Law (Boalt Hall) at the University of California, formerly Associate Professor in the Department of Economics at Boston University, and a noted expert on econometrics and the economics of regulated industries.

[7] The database is described in Appendix B of LECG's Report. LECG also collected and analyzed data from NAB's annual financial reports since 1975 surveying the profits and expenses of television stations. See LECG Report, Appendix B.

LECG concludes, based on the extensive data base it has assembled and cogent and detailed analysis, that repeal of PTAR at this time will cause a dramatic decline in the ratings of independent stations during the crucial access and prime time periods. The resulting rapid erosion of independent station profitability will cause many of those stations to go dark. Specifically, LECG predicts:

- **Highly rated off-network shows would displace first-run shows on the schedules of network affiliates during the access hour.**

- **Independent stations would lose their most popular off-network hits, and would be forced to substitute lower-rated, far less profitable off-network shows.**

- **Independent stations would suffer an immediate <u>58% decline in ratings for the second half hour of the access period</u>.**

- **Because of the demonstrable carryover effect of access ratings into prime time, independent stations would suffer a precipitous <u>67% decline in ratings for the 1-1/2 hour period consisting of the second half hour of the access period and the first hour of prime time</u>.**

- **As a result of these ratings declines and concomitant declines in advertising revenues, many independent stations would go dark.**

- **This shrinkage of the independent television sector would stymie the growth of emerging networks like UPN.**

A number of misconceptions have been circulated in an attempt to discredit PTAR. By their frequent repetition, these misconceptions have acquired a certain mythic quality. These myths cannot withstand empirical testing or critical analysis, and LECG's economic study explodes them:

- **The Myth that Increased Cable Penetration has Eliminated the UHF Handicap:**

  Fact: the UHF handicap under which most independent stations operate has not been erased by cable carriage and the disparity between the economic strength of independent stations and network affiliates has widened, not diminished, since the spread of cable.

- **The Myth of Vanishing Network Prime Time Dominance:**

  Fact: continuing network market power in prime time television is evident from substantial increases in prime time advertising rates, which far outstrip both consumer price inflation and increases in basic cable rates. Basic cable rates were deemed so excessive that they have recently been regulated by the Commission pursuant to Congressional mandate.

- **The Myth of the Three Dominant First-Run Syndicators:**

  Fact: the only relevant economic market is the four hours of prime time, and the three most successful syndicators (Fox, King World and Viacom) collectively control only 12% of television viewing during that period, compared to the three major networks' 63% share. Those syndicators do not have the power to raise advertising rates in a monopolistic fashion or erect barriers to entry to other program distributors during either the access hour or the rest of prime time.

- **The Myth of the Significance of Syndication Clearances in Markets 51-100:** that affiliates' preference for first-run programming in markets 51-100 would persist despite the repeal of PTAR and is predictive of the post-repeal programming preferences of stations in the top-50 markets.

  Fact: program purchasing patterns in the smaller markets while PTAR is in effect are in large part a function of PTAR's restrictions on top-50 market affiliates, and are not indicative of what would happen to first-run programming in either large or small markets if PTAR (or its off-network restriction) were repealed. Instead, there is likely to be a reduction of time available for first-run programs during the access hour as top-50 market affiliates acquire off-network programs, leading to a substantial curtailment of production of first-run programs, affecting both top-50 and below-50 markets.

Viacom will show in these Comments that the repeal of PTAR will result in an irretrievable loss of outlet diversity and competition at both the local and national levels. That unfortunate result would be antithetical to the public interest and far outweighs any claimed benefits of PTAR's repeal.[8]

II. PTAR WAS ESSENTIAL TO THE GROWTH OF THE FOX NETWORK AND REMAINS ESSENTIAL TO THE EMERGENCE OF NEW NETWORKS LIKE UPN.

A. UPN is Committed to Building a New Network.

UPN[9] was launched in January, backed with an investment of about $300 Million for the first four years.[10] UPN made a strategic decision to launch with a strong but limited schedule of four hours of prime time programming over two weekday evenings plus a two-hour movie block on Saturday afternoons. The cornerstone of the network's program schedule is Paramount's all-new, dramatic hour: "Star Trek: Voyager," the latest

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[8] While PTAR has unquestionably contributed to the proliferation of first-run programming, Viacom will leave it to other parties in this proceeding to comment on the extent to which PTAR has fostered the development of first-run programming. Viacom will focus in these comments on why PTAR has fostered the development of new television networks and the independent television stations that form the building blocks of those new networks.

[9] As discussed in note 4 supra, Viacom has a contingent ownership interest in UPN. Consequently, Viacom's comments, while generally generic as to emerging networks, provide specifics as to UPN.

[10] See Tobenkin, New Players Get Ready to Roll -- UPN, WB Prepare to Take Their Shots, Broadcasting & Cable, January 2, 1995, at 30. Viacom's interest in UPN is discussed at note 4 supra.

incarnation of one of television's longest running, most popular series. The initial prime time schedule is rounded out by two new half-hour comedies and two new dramatic hours. UPN plans to expand its prime time program schedule to a total of six hours of programming on three nights a week by January 1997 and ten hours of programming on five nights a week by January 1998.

In addition to its prime time offerings, UPN is currently planning to develop a full slate of programming for children. UPN plans to add a one-hour block of children's programming on Sunday mornings by the fall of 1995, which will be expanded to two hours of programming by the fall of 1996. In addition, by the fall of 1997, UPN plans to provide ten hours of children's programming on weekday afternoons (two hours each day).

Thus, UPN is committed to providing an expanding array of new programming choices to independent stations that will strengthen those stations and increase the diversity of programming available to their viewers.

B. The New Network Faces Daunting Obstacles in Competing with Entrenched National Networks.

The UPN network debut has been encouraging, but there should be no illusions about the long and tough road ahead before UPN is able to achieve a real competitive toe-hold in prime time. As noted above, UPN launched with six hours of programming, only four of which are in prime time. By comparison, CBS airs 121 hours of network programming, NBC has 101 hours, and ABC offers 82 hours per week.[11]

UPN also steps into the competitive world of prime time television with an enormous coverage disadvantage. The new network launched with 67% national coverage through primary affiliates, as compared to the 99% coverage enjoyed by ABC, CBS and NBC and Fox's 97% coverage -- a huge coverage disadvantage.[12] Coverage affects both ratings and advertising costs per minute for network shows -- two factors that are critical to long-term network success.

An additional 16% of UPN's coverage is achieved through secondary affiliations using out-of-pattern clearances. This further handicaps its ability to compete with the established networks. Those stations will be unable to air the full prime time schedule UPN ultimately hopes to run. Moreover, UPN has primary affiliates in only 37 of the crucial top-50 markets. In contrast, ABC, CBS, NBC and Fox have primary affiliates in <u>all</u> of the top-50 markets.

UPN begins its existence at a decided disadvantage not simply in the scope of its national coverage, but also because

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[11] <u>See</u> Appendix A.

[12] <u>See</u> Appendix B. The coverage figure for Fox is projected for Fall of 1995. UPN launched with slightly less national coverage and less VHF coverage than the Fox Network had in 1987. <u>See</u> Appendix C.

most of its affiliates are UHF stations.[13] Fully 83% of UPN's primary and secondary affiliates -- 93 of its 112 affiliates -- are UHF stations. By comparison, only about 25% of the established networks' affiliates are UHF stations.[14]

Although the Commission has questioned whether a "UHF handicap" exists in those 60% of U.S. homes that subscribe to cable,[15] the LECG Report demonstrates that stations which operate on UHF channels continue to suffer a substantial UHF handicap, despite the spread of cable.[16] The LECG Report demonstrates that broadcast on a UHF channel decreases a

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[13] During the last three decades, both Congress and the Commission have taken steps in an attempt to alleviate the technical and other handicaps under which most independent stations operate and to foster the growth of the independent television sector of the industry. See, e.g., All Channel Receiver Act of 1962, 47 U.S.C. 303(s); Amendment of Multiple Ownership Rules, 100 FCC 2d 17, 22 n.15 (1984) (noting that national multiple ownership limits were amended in 1954 "to encourage the development of UHF stations, which were then just becoming available in the marketplace"); Report and Order in Docket No. 20839, 62 FCC 2d 164 (1976) (requiring that television receivers with VHF antennas also have UHF antennas and that they have the UHF antenna affixed if the VHF antenna is affixed); Report and Order in Docket No. 21010, 69 FCC 2d 1866 (1978), on recon., 70 FCC 2d 1176 (1978), rev'd in part, Electronic Indus. Ass'n v. FCC, 636 F.2d 689 (D.C. Cir. 1980) (reducing maximum allowable UHF noise figure of television receivers); Competition and Responsibility in Network Broadcasting, 23 FCC 2d 382, 394-95 (1970) (citing desire to foster the development of independent stations as one of the principal reasons for adopting PTAR and the financial interest and syndication rules).

[14] See Appendix D. Also afflicted by the UHF disadvantage, Fox has been trying hard in recent months to trade its UHF affiliates for VHF affiliates. This was the impetus for Fox's investment in New World described in Section V.A. below.

[15] See NPRM at 6351.

[16] See LECG Report at 40-53.

program's ratings by as much as 4 points, depending on the day and time period of the broadcast.[17] This huge ratings disparity enables VHF stations -- the vast majority of which are affiliated with the established networks -- to secure far more advertising revenue than a UHF independent or a UHF affiliate of a new network.

The ratings drops of major network affiliates in those markets where Fox recently lured VHF stations into switching their affiliation provide recent and graphic evidence of the persistence of the UHF handicap -- regardless of cable carriage.[18] As reported in Nielsen's just released report February sweeps, the major networks' ratings plunged in those markets where they were forced to replace their VHF affiliates with UHF affiliates. In Tampa, ABC's network news fell 11 share points and its overall prime time schedule fell three points on its new UHF affiliate. In Phoenix, ratings for ABC's entertainment schedule fell about 12% from their average in the November sweeps. In Milwaukee, CBS' prime time share points fell 10 share points. In Detroit, CBS lost 9 share points in prime time. In Atlanta, CBS lost 8 share points in prime time as a result of moving from a VHF to UHF affiliate.[19] Disparities as

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17 Id.

18 These affiliation changes are discussed in Section V.A. below.

19 The Hollywood Reporter, March 3-5, 1995, at 1.

large as these could not be attributable solely to disruption of viewing patterns.

Given the adverse effect of the UHF handicap on ratings performance, it is not surprising that the LECG Report shows that network affiliates are far stronger economically, on average, than their UHF independent station competitors.[20] The affiliates of the major networks have been consistently profitable and are without question the dominant stations in the top-50 markets where PTAR applies. Further support for this finding can be found in the OPP Paper, which showed that profits of network affiliates consistently exceeded 20% of net revenues during the period 1975-1989, whereas the average independent station operated at a loss during the late 1980s and was marginally profitable in 1989.[21]

Similarly, the LECG Report shows that the profitability of network affiliates in the ten largest markets climbed rapidly during the 1980's, the period of explosive cable growth.[22] During the same period, the large profitability gap between network affiliates and independent stations widened, despite the growth of cable. This gap undoubtedly reflects in part the numerous benefits of affiliation with a mature and powerful

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[20] See LECG Report at 31-45.

[21] See Selzer and Levy, Broadcast Television in a Multichannel Marketplace, OPP Working Paper No. 26, 6 FCC Rcd 3996, 4020-26 (1991) ("OPP Paper"). "Net revenues" means gross revenues less agency and rep commissions. See id. at 4023 n.30.

[22] See LECG Report at 36, Fig III.2.

nationwide network distribution system. The affiliate receives from its network a continuing flow of popular programs to fill much of its broadcast day. It also receives substantial affiliate compensation and enjoys the benefits of expensive network promotion. Moreover, this profitability gap reflects, contrary to the supposition in the NPRM,[23] that the UHF handicap has not been eliminated by increases in cable penetration and that the UHF handicap continues to depress the ratings of UHF stations.[24]

Thus, it is readily apparent that UPN (and WB) face an uphill battle to achieve anything approaching competitive parity with the three major networks and Fox in terms of the extent and quality of their coverage. If UPN is ever to become a real competitive force in prime time and other day parts, boosting the economic health of its primarily UHF affiliate base, it will have to expand both its program offerings -- particularly its prime time schedule -- and the number of its affiliates so that it reaches at least 90% of television households with primary affiliates. Fox's current success would never have been attained if it had not been able to expand its audience reach beyond the 83.4% coverage it had when it commenced prime time service in April 1987. At least thirty stations have signed on as Fox affiliates since the network's initial launch.[25] Fox now has

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[23] See NPRM at 6351.

[24] See LECG Report at 31-44.

[25] See Appendix E.

national coverage of 95% -- almost on a par with the major networks, although it continues to be handicapped by a much higher percentage of UHF coverage than ABC, CBS and NBC.

PTAR was essential to the financial health of the independent stations on which Fox built its network, and will be equally essential to the growth of UPN and WB. As Fox recognized in 1990 when it was trying to get its new network off the ground:

> [T]he fact remains that many UHF stations are still struggling to survive and become competitive. The modest boost these stations gain by running off-network programs during access time is critical to their economic well-being. In addition to this competitive consideration, the prime time access rule continues to serve the bedrock policy objectives of diversity and local station autonomy. In short, the prime time access rule stands independent of the financial interest and syndication rules, and should not be tampered with.[26]

As discussed below, PTAR is vital to the financial health of UPN's independent station base, and may well mean the difference between economic viability and going dark for many of those UHF stations. Repeal of PTAR would undermine the strength of UPN's existing affiliate base and would certainly deter entrepreneurs from starting up new stations -- the *sine qua non* for UPN to expand its coverage and achieve anything approaching coverage parity with the established networks. Without an adequate base of financially stable affiliates across the nation, UPN will never establish a firm foothold in the fiercely competitive video

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[26] Petition for Resumption of Rulemaking and Request for Temporary Relief filed by Fox Broadcast Company, January 30, 1990, at 13-14.

marketplace, much less be able to expand its affiliate base so that it will be economically viable in the long term.

III. REPEAL OF PTAR WILL IMPAIR THE VIABILITY OF INDEPENDENT STATIONS AND UNDERMINE EMERGING NETWORKS.

A. Repeal Will Cause Steep Ratings Declines of Independent Stations and Loss of Outlets.

The LECG Report provides stunning, empirical confirmation that PTAR has contributed directly, immediately and dramatically to the ratings performance of independent stations and, over the years, to the increase in the number of independent stations nationwide. The data shows that during the ten years immediately following the effective date of PTAR, the ratings of independent stations increased, on average, by 87% during the 1/2 hour access period from 7:30-8:00 p.m., EST and PST (6:30-7:00 p.m., Central time),[27] and 33% for the 1-1/2 hour period including the access period and the first hour of prime time.[28] The LECG Report concludes that there is nothing other than PTAR to account for this substantial jump in independent station ratings immediately following PTAR's effective date.[29] Moreover, the data in the LECG Report reveal that improvements in independent stations' ratings are caused by both the three-hour restriction on

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[27] LECG chose to sample Arbitron ratings for the 7:30-8:00 p.m. period instead of the full one-hour access period because the major networks did not typically program the first half-hour of the access period before PTAR was adopted. Therefore, the ratings for the second half-hour provide the purest test of the effect of PTAR on independent stations' ratings. See LECG Report at 53.

[28] LECG Report, Appendix C, at 33.

[29] LECG Report, Appendix C, at 38.

network-originated programming, which went into effect in 1971, and by the off-network restriction, which did not become effective until 1975 because of intervening unsuccessful legal challenges.[30]

The LECG Report also shows that, over the 15-year period following enactment of PTAR, the boost in independent stations' ratings attributable to PTAR caused entrepreneurs to enter the marketplace and start up new stations.[31] LECG's econometric analysis casts doubt on the popular view that the growth in the number of independent stations during the 1980's was a result of the growth in cable penetration. The more likely explanation, LECG concludes, was that "growth in the number of independent stations in the 1980s was a predictable long run impact from the improved ratings performances PTAR created in the 1970s."[32] Correcting for other factors that may have contributed to the improved performance and growth in the number of independent stations, the LECG Report demonstrates that PTAR itself had a positive and statistically significant effect upon the performance and growth of independent stations.[33]

The LECG Report does not simply demonstrate the historic effects of PTAR. LECG predicts that repeal of PTAR this year would have a negative impact upon the ratings of the average

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[30] LECG Report at 51.

[31] LECG Report at 54-57.

[32] Id. at 56.

[33] Id. at 48-57.

independent station for the 1-1/2 hour programming period studied in all of the markets surveyed during all years from 1995-2004.[34] The size of the negative effect will vary over time and across markets, and is predicted to be more severe in the smaller markets than the larger markets. LECG also predicts that repeal would have a strong negative impact upon average station ratings for the second half hour of the access period in all but the largest market, New York City.

Specifically, LECG's econometric model predicts an immediate decline of 58% -- an average of 2.34 ratings points -- in the ratings of independent stations for the access period.[35] Moreover, because there is a statistically demonstrable carry-over effect of access period ratings to the ratings for the adjacent prime time period, the model predicts that repeal of PTAR would result in a 67% decline in the ratings of independent stations for the 1-1/2 hour period consisting of the second half hour of the access period and the first hour of prime time.[36]

These compelling and well supported predictions have significant public interest ramifications. Because independent

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[34] See LECG Report, Appendix C at 56. LECG collected Arbitron data for all independent stations in the 30 largest markets, rather than all 50 of the markets to which PTAR applies, because there were almost no independent stations outside of the 30 largest markets prior to the adoption of PTAR. See LECG Report at 47.

[35] See LECG Report at 47-48.

[36] LECG Report at 48. LECG estimates that at least 45% of the projected ratings decline would occur if the off-network restriction were repealed but the network origination restriction were retained. See LECG Report at 51.

stations rely on the access period and adjacent periods for a disproportionate amount of their total profits,[37] the predicted steep ratings declines will immediately result in reduced earnings for those stations. Given the already tenuous financial position of many independent stations,[38] this precipitous decline in ratings and profits would probably cause many independent stations to go dark. From the public's point of view, this would result in a loss of television outlets in local markets providing programming outside the "network funnel." The Commission has always viewed a diversity of television outlets as the engine of both source diversity and program diversity. As it recently stated:

> Regulation that fosters the growth of more program outlets leads to the expression of more viewpoints without directly involving the Commission in broadcasters' programming decisions. We believe that efforts to promote outlet diversity also enhance source diversity, because an increase in the number of financially secure stations in a market increases demand for programming. Thus, while the promotion of each type of diversity is therefore independently justified under the rubric of the public interest, by promoting outlet diversity, the three principles work together to provide a robust programming market.[39]

Since independent stations are the foundation of the new networks, and those networks cannot expand without the addition

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[37] See Comments of the Association of Independent Television Stations, Inc. filed today in this proceeding.

[38] See page 12-13 supra.

[39] Evaluation of the Syndication and Financial Interest Rules, 8 FCC Rcd 3282, 3320-21 ("Fin-Syn Order"), on recon, 8 FCC Rcd 8270 (1993) ("Fin-Syn Reconsideration Order"), aff'd, Capital Cities v. FCC, 29 F.3d 309 (7th Cir. 1994).